



November 29, 2018

Honorable Tani Cantil-Sakauye, Chief Justice  
Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

**Letter of Amici Curiae in Support of Petition for Review in *National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward*, No. S-252445  
(1st Dist. No. A149328) (Super. Ct. No. RG15-785743)**

To the Honorable Chief Justice and Associate Justices of the California Supreme Court:

Pursuant to Rule 8.500(g) of the California Rules of Court, the undersigned community advocacy organizations respectfully urge the Court to grant the Petition for Review in this matter. Amici ask this Court to find that the California Public Records Act (Government Code section 6253.9(b)) does not allow a public agency to shift the cost of redacting electronic records to the requester.

**Interests of Amici**

Amici are community-driven advocacy, policy, and legal aid organizations that rely on the California Public Records Act to protect the rights and interests of their constituents and to hold government actors accountable.

The Coalition on Homelessness is a San Francisco-based grassroots nonprofit that advocates with and for homeless people and frontline service providers to help build permanent solutions to homelessness and protect the human rights of those forced to remain on the streets. The Lawyers' Committee for Civil Rights of the San Francisco Bay Area is a nonprofit working to protect and promote the rights of people of color, immigrants, and low-income people in California through free legal aid, impact litigation, and policy advocacy. Legal Aid Foundation of Los Angeles is a nonprofit law firm that helps protect and advance the rights of the most underserved in Los Angeles County through direct legal services, systemic litigation, self-help clinics, and technical assistance to community organizations.

Legal Services for Prisoners with Children organizes communities impacted by the criminal justice system and advocates to release incarcerated people, to restore human and civil rights, and to reunify families and communities. Western Center on Law & Poverty advocates on behalf

of California's poorest residents to advance access to housing, health, public benefits, jobs and justice. Finally, the Western Regional Advocacy Project is a coalition of community groups that lobbies for smarter, representative, and accountable public policy that protects those most in need rather than punishing them for their circumstances.

Amici organize with homeless people, communities of color, and low-income individuals, and advocate for them at the state and local level. In this work, they rely on the California Public Records Act to investigate government policies and practices and to hold public agencies accountable. Amici therefore have a longstanding interest in maintaining affordable access to electronically stored public records. They operate with limited resources and, as illustrated by the examples below, would be adversely affected by a judgment that could force them to bear the costs of redactions to these records.

### **Background**

The California Public Records Act ("CPRA" or "the Act") provides that public agencies may only charge for "the direct costs of duplication" when responding to requests for copies of disclosable records unless there is an applicable statutory fee. Gov. Code § 6253(b). The "direct costs of duplication" means simply "the cost of copying them." *North County Parents Organization v. Department of Education* (1994) 23 Cal.App.4th 144, 147. Under established precedent, the "direct costs of duplication" do *not* include the labor costs of responding to requests or redacting portions of records. *See id.*

The Act sets out certain distinctions regarding when and how agencies must provide copies of electronically stored public records. Gov. Code § 6253.9. In general, however, it guarantees that, as with all other records, "[t]he cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format." Gov. Code § 6253.9(a)(2).

Government Code section 6253.9(b) offers a limited exception to this guarantee. The requester may nevertheless bear "the cost of programming and computer services necessary to produce a copy of the [electronic] record" when "[t]he request would require data compilation, extraction, or programming to produce the record." Gov. Code § 6253.9(b).

The legal question posed in the Petition for Review is the proper scope of this exception and, more specifically, the meaning of the term "extraction" as used here. In the case at hand, petitioner requested copies of electronically stored video files created by police body-worn cameras. The City then sought to recoup the cost of editing out allegedly exempt material from the otherwise disclosable video files. Petitioner brought this suit to determine whether section 6253.9(b) allowed the City to recover these costs.

The Court of Appeal concluded that the language of the statute was "unclear" as to whether the term "extraction" should include "any act of removing or taking out material from an electronic record in anticipation of its production (including exempt material) or, as the Guild insists, only removing or taking out 'data' for the purpose of constructing or generating a previously nonexistent record." Slip Opinion at 10.

Nevertheless, the Court of Appeal ultimately concluded that section 6253.9(b) allowed the City to recoup the cost of “constructing” this copy, “including the cost of special computer services and programming . . . used to extract exempt material from these recordings.” Order Modifying Opinion and Denying Rehearing at 2.

On November 7, 2018, the National Lawyers’ Guild submitted a Petition for Review to this Court.

### **Discussion**

While the case at hand involves video files, the Court of Appeal’s interpretation of section 6253.9(b) implicates public access to a broad swath of records. Public agencies increasingly store most, if not all, of their records electronically. In general, these files – whether they are data sets, text, images, or videos – can *only* be redacted using computer programs. The Court of Appeal’s reasoning sets out a path for public agencies to attempt to transfer the cost of any and all electronic redactions to the requester.

As the preamble to the CPRA declares, “Access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” Gov. Code § 6250. The Court of Appeal’s interpretation of section 6253.9(b) improperly casts aside this purpose and gives insufficient weight to the guarantee of public access enshrined in the California Constitution. Specifically, Article I, Section 3(b) of the California Constitution provides that a statute “shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.” When, as here, a provision of the CPRA is ambiguous, this “constitutional imperative” should guide courts to an interpretation that favors public access. *See City of San Jose v. Superior Court* (2016) 2.Cal5th 282, 292.

Amici rely on the affordable access to electronic records guaranteed by the CPRA. For small groups with limited budgets, the Act is a crucial tool to give voice to the needs and interests of underserved communities. Some of the undersigned organizations have no lawyers or professional lobbyists on staff. Their clients and constituents have very little access to power. The CPRA is often the *only* way to ensure that officials respond to their inquiries. If required to pay hundreds or thousands of dollars for responsive documents, the CPRA will be functionally unavailable to them. Amici’s experiences highlight the stakes of this dispute and show why “the people’s right of access” should resolve any ambiguity in the plain language of the CPRA.

### **Public Access and Transparency**

Advocacy groups across the state and across the political spectrum use the CPRA to make government policies and practices more transparent, and Amici rely on the Act to gather information about government actions that directly affect their constituents. For example, this year Legal Services for Prisoners with Children submitted CPRA requests to more than ten voting registrars’ offices to investigate whether voter eligibility laws were being properly executed. This produced hundreds of pages of records, many of which had to be redacted because they included information related to individual criminal records.

Similarly, the Coalition on Homelessness uses CPRA requests to investigate how the enforcement of “quality of life” offenses impacts its constituents. Through these requests, the

Coalition has obtained voluminous records from public agencies, including electronic copies of redacted dispatch logs, policy guidelines, and, crucially, citations created and stored as digital files. In order to obtain these same citations from the Superior Court, the Coalition would have had to request each file individually. It therefore relied on CPRA requests to grasp the scale and scope of the issue. The Western Regional Advocacy Project and its member organizations have made similar CPRA requests to police departments throughout the state. These requests have been essential to the one of the organizations' key goals – to investigate and inform the public about the police practices in communities of color and with respect to people living on the streets.

Finally, attorneys with the Legal Aid Foundation of Los Angeles routinely request reports from the Los Angeles Housing and Community Investment Department and the Department of Public Health. These records, including habitability complaints, are maintained and produced electronically and often include redactions of identifying information. If forced to cover the costs of redaction, the Legal Aid Foundation of Los Angeles would be limited in its ability to identify housing trends and hold private landlords and public housing authorities accountable for the conditions in their buildings.

#### Advocacy and Public Policy

The transparency and access to information guaranteed by the CPRA empower Amici to advocate for public policies that respond to their constituents needs. For example, the Coalition on Homelessness recently submitted a CPRA request for records related to a partnership between the San Francisco Police Department and the San Francisco Department of Public Works to conduct sweeps of encampments. The first production alone totaled over 300 pages and included electronic copies of redacted police records and property logs. These documents ultimately helped the Coalition as it advocates for changes to the City's policies, including changes that would prevent the loss of homeless people's property and increase encampment safety.

Lawyers' Committee for Civil Rights also used a CPRA request to obtain records related to Oakland Housing Authority police detentions of residents and their guests. These requests have already led to the production of over eight thousand records, including thousands of redacted electronic incident reports, and production is not complete. By sharing some of these records with local officials, Lawyers' Committee and its community partners successfully persuaded the Oakland City Council to repeal an unconstitutional loitering ordinance that was being enforced against housing authority residents.

CPRA requests were also crucial to Lawyers' Committee for Civil Rights' and Western Center on Law & Poverty's groundbreaking investigation into how public agencies used driver's license suspensions to collect unpaid traffic court debt. These requests directly informed a series of reports produced by the Back on the Road California coalition shedding light on these practices. Ultimately, these reports helped persuade the legislature to change license suspension laws. Both organizations are now part of a coalition conducting a similar investigation into government-authorized vehicle tows. They have already received thousands of electronic documents from more than twenty local government agencies in response to CPRA requests.

### Affordable Access

Amici operate with extremely limited budgets and could not afford to use the CPRA for the advocacy described above if forced to bear the cost of redactions. For example, in the last year, the Western Regional Advocacy Project submitted five CPRA requests and received hundreds of pages of documents related to public-private partnerships through Business Improvement Districts. Some of these records were exempt or partially exempt, so production and redaction were resource-intensive. The Western Regional Advocacy Project could not have paid even small amounts for these records, which are vitally important to its advocacy. WRAP, an organization founded by formerly homeless people, has an annual budget of only \$184,000, only two full-time staff members, and is funded almost exclusively by small donors. Similarly, the Coalition on Homelessness, which has submitted dozens of CPRA requests in the past ten years, has a staff of only seven full-time employees, none of whom earn more than \$35,000. It simply would not be possible for these organizations to access public records if required to pay hundreds or thousands of dollars to do so.

Every one of the non-profit amici organizations is faced with overwhelming need for its work. Every one of them budgets and allocates its limited funds very carefully. For these organizations, even \$200 is a significant expenditure, and the \$3,000 charged to the National Lawyers Guild in this case would be prohibitive.

From their decades of experience working in community coalitions in California, Amici believe that countless other community groups in California similarly rely on affordable access to public records to provide meaningful advocacy on razor thin budgets.

### Conclusion

In sum, the Court of Appeal's interpretation of the CPRA gives insufficient weight to the guarantee of public access embedded in Article I, Section 3(b) of the California Constitution. The Act's distribution of costs plays an essential role in preserving the public's "fundamental and necessary right" to access information "concerning the conduct of the people's business." Gov. Code § 6250. Amici respectfully urge the Court to grant the petition for review to ensure that this guarantee keeps pace with technological change.

Sincerely,

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